the right-holders with the material they require, or that mere "rules" made under the Act, will secure forest conservancy[10].

A reserved forest means nothing more than a forest permanently wanted as such, and therefore demarcated, and settled as regards the rights which exist in it. Of course, a certain portion of the forest may be free of rights, and that is a most desirable condition. But equally, of course, a very large portion of it will have not only to bear with rights, but even to exist for the main purpose of supplying those rights. This subject was also alluded to in Chapter IV, (pp. 97, 98) to which the student should refer.

Section VII.—Of the Commutation of Forest Rights.

§ 1.—*The third Method of dealing with Rights.*

The provision for rights described in the last section may not always be possible. There may be no surplus forest[1] to give up to the exercise of rights, and the rights which exist are in such number that it is impossible not to recognize that they cannot go on without destroying the last vestige of the forest. It may be that no more regulation, or reasonable restriction, as to time, quantity, method of user, and so forth, will be of any avail. Then the right must be got rid of by compensation.

When the forest right is not provided for in one of the above ways, or (as the Indian Act puts it) **when it is impossible, having due regard to the maintenance of the forest** (*i.e.*, when the forest cannot bear the right without deterioration, or the right would suffer unfair curtailment, and when there is no other land available for the exercise of the rights), "**the Settlement**

[10] There may be exception in some provinces where the *legal difficulty* of getting the forest may be so great that we are glad to get *any* kind of power, however imperfect, to prevent or at least to retard destruction, and therefore accept any position for the forest area that circumstances admit, whether in principle right and logical, or not.

[1] As, for example, where cutting off a piece would leave the rest too small to be manageable.

Officer shall (subject to such rules as the local Government may from time to time prescribe in this behalf) commute such rights either by a payment to such persons of a sum of money in lieu thereof, or by grant of land[2], or in such other manner as he thinks fit." (Indian Act, section 14).

It will be observed, with regard to the provision quoted at the end of the last section, that nothing is said of how the rights are to be valued, or on what principle either the grant of land is to be made or the grant of money awarded. All that is said is that the Settlement Officer may "commute"[3] the rights.

§ 2.—*Points involved.*

But the law involves some very important points, which I must endeavour to bring out clearly.

In the first place it is the *Settlement Officer* who determines, not the parties, whether it is a case for commutation. There is, of course, ample room for his hearing and giving weight to the representations of either the forest officer or the right-holder, that the case is or is not one in which the right should be got rid of specifically by compensation. And the local Government may make rules for his guidance in such matters. Still the ultimate decision rests with him. Next, the principle of decision is whether or no the *maintenance of the forest* is compatible with the rights. The Burma Act, it will be observed, does not use this phrase: it was thought better to leave the ground for proceeding to compensation open and dependent on the merits of the case. For it is possible that rights may be commuted by consent, or for some reason not directly bearing on the "maintenance" of the forest; moreover, "maintenance" as a *legal* term is not very definite. It is better

[2] The Burma Act adds to this '*grant of land*,' that it is to be adopted with the consent of the right-holder.

[3] In French the 'commutation of rights' is *extinction par voie de cantonnement* (cutting off a bit of forest and granting it in full right) *ou de rachat* (money compensation). "*Ablösung*" in German. (*Abtretung* is cutting off a piece of forest.) *Affrancazione di diritti* in Italian.

then not to attempt to define the circumstances under which compensation should be resorted to, and leave that to be a matter of principles and of the circumstances of the case. There is no doubt however, that in practice, compensation will, in the majority of cases, be connected with the impossibility of maintaining the forest otherwise. It is also true that the true "maintenance" must according to reason and equity, be understood as I have described What is to be understood by the "maintenance" of the forest I have already discussed fully in Chapter V, section II (p. 116)[4].

[4] The French law and that of the German States, proceed in a different manner. In the first place, the question has there to be settled,—who is to claim that the right should be got rid of? Is it the owner of the forest that makes the demand, or is it the right-holder that can claim to be bought off?

As a matter of principle it is the soil-owner only who has the strict right to demand the extinction of the right on payment of compensation. As Pfeil remarks (p. 65): "The person who has no ownership of the soil, but only the right to enjoy a specific product of it, can have no claim to determine how the soil and the estate which do not belong to him shall be managed. * * * Still less can he claim that his right should be bought out; he can only require that his right be not interfered with or diminished by an alteration in the usual conditions which have heretofore been maintained." * * * "The right-holder has the right to a specified share in the enjoyment of the produce; it is then contrary to the nature of his right that he should be able to demand a capital sum or a yearly rent in lieu of it."

The French law has adopted this view in Art. 63. of the Code, which, as I before have explained, directly reverses the revolutionary rule put forward in 1792, that the forest right-holder *shared the property* in the forest with the landlord, and that, therefore, he might demand practically the division of the estate, and had to get a portion of the estate in lieu of his right. Art. 63 allows only the *forest owner* to claim to expropriate the right, by cantonnement, *i.e.*, giving up a bit of the forest, in absolute ownership by way of compensation for a right of wood.

The reader will remember that the term "cantonnement" has now no other meaning than this. The Code does not, however, exclude the possibility of a claim on behalf of a right-holder for *money* compensation in lieu of his right, if he prefers to take this, instead of submitting to the restrictions which forest conservancy might necessitate. Whether this could be done or not in practice, I am not able to say, but there is nothing in the words of the Code which prevent it.

On the other hand, though the right-holder can never claim anything but his right, and what it gives him, it is very reasonable to give him the faculty of requiring to be bought out, if his right has to be restricted, and he himself subject to annoyance and to troublesome conditions in order to get what he wants. Some laws therefore permit the claim to come from either party, and some require both parties

§ 3.—*Commutation of Rights when necessity is pleaded.*

Another important question is raised and answered in the French law, as well as in some others—Can you claim to buy out a right if the right is a *necessity* to the inhabitants of one or several communes? The French law does not indeed raise this question for all rights, nor for individual right-holders. It assumes, for example, that wood-rights are never indispensable as free rights. Wood can always be bought. If, therefore, you compensate a wood-right, the right-holder is furnished with the means of buying wood.

In France, wood-rights are got rid of always, by granting in full proprietary right, a piece of the forest of a value equal to the capitalized value of the right: this process is called "cantonnement" (Cod. For. Art. 63); the piece so granted is the property of the grantee. He can either keep it as forest or cultivate it: in either case it meets his wants. If it is kept as forest, it supplies the right in kind: if cultivated, it gives him a money profit or the means to buy wood with.

But Art. 64, speaking of grazing right, contemplates cases where a whole community have no other way of supporting their cattle, and where no sum of money would satisfactorily indemnify them for the loss of a grazing right; in such cases, Government

to agree. It will be sufficient to indicate in a note an outline of the provisions of the chief European laws.

Eding (Prussian law chiefly) says merely "that a procedure and practice have been elaborated, whereby either side can compel the other to accept an equivalent for the heretofore exercised right, respect being had to the opinion of competent persons and to the express provisions of the laws relating to the subject." This, it will be observed, concedes the right to demand to *either* side, not at all because the right-holder is regarded as a joint-owner, which no one would admit for a moment, but on the ground of convenience. By this Prussian law if the right-holder claims, then the forest-owner has the option of saying whether the value of the right, or the value of the advantages which *he* will get by having it removed, shall be taken as the basis of compensation. This is quite fair; he may say in effect, "I do not much want to get rid of your right, the only advantage to me will be, I estimate, valued at so much, if that sum will satisfy you, take it; if not, keep your right." If the forest-owner claims, that shows that the advantage to him is at least equal to the value of the right, and he must tender the full value of the right accordingly.

cannot expropriate the right: it is recognized as "of absolute necessity" to a community or to several communes. The question of necessity may, if disputed, be tried before the "*conseil de préfecture.*" The Austrian law is somewhat similar, but takes in both sides. It disallows the commutation of rights when this would "interfere irretrievably with the management, either of the dominant or servient estate."[5] In the excellent Saxon law of 1832, I do not find any mention of this principle, except in connection (section 125) with a right to collect stones, loam, or sand.

The principle is, no doubt, in itself a just one, and it is really and practically involved in the Indian procedure, only it would lead to no useful purpose to specify it more directly.

In all Indian Forest Settlements, there is the intervention of a civil officer,—the Forest Settlement Officer,—whose express object is to see that the people get due consideration; in fact, to hold an even balance between the demands of the public interest in the matter of forest conservancy on the one hand, and the convenience of right-holders on the other. And it is always open to him (and to the local Government on revision of his proceedings) to give up altoge-

In Saxony, a special law deals with "ablösung" or extinction of rights (17th March 1832, Qvenzel, p. 216). Here, also, either side may claim (§ 24). The same condition as to the value to be paid, as described under the Prussian law, is provided (§ 128).

The Bavarian law of 1852, Art. 29 *et seq.* (Roth., § 317 *et seq.*, p. 325) provides that, as a rule, both parties must agree if the right is to be extinguished by a yearly payment, but either party can, under certain circumstances, claim to have the yearly payment capitalized. The Government, however, may demand the extinction of rights in State forests, without such agreement, and may offer either a capitalized money compensation or a bit of the forest like the French cantonnement. The same right is exceptionally extended to private forest-owners in certain cases.

In Austria (Kaiserliches patent, 5th July 1853), it would appear that the forest-owner alone can claim (Grabner, § 17, pp. 258-59).

The Italian law (No. 2794, serie 2*a*, 1st November 1875, Art. 3) allows the Government only to claim the extinction of rights by compensation.

[5] Kais: Patent, 5th July 1853, Art. 5. That means when the dominant estate could not get on without the right, or when the servient estate, if compelled to buy out a right, would have to pay such a heavy sum in compensation as would paralyze its resources, or at any rate prove wholly disproportionate to the advantage gained by the extinction.

ther the attempt to make a forest on land which is really indispensable as a grazing-ground, and which at the same time is not so situated that the safety of the district is involved in its maintenance as a forest.

Another consideration must be borne in mind: it is all very well to say that in some cases a right is indispensable or is very much wanted, but there are hill ranges and other places where, if the grazing right is not regulated to perhaps rather inconvenient limits or stopped altogether for a time, nature will stop it for you by ceasing to produce, on the ill-used soil, the grass necessary for the grazing-right. It is much better to give compensation than to produce this result. Moreover, who is to decide, in a very uncivilized country, whether the right is absolutely necessary? In France the conditions are different, and it may be possible to discuss and settle such a question by evidence and argument before a court of law. In India, it is much better to leave the matter to the Settlement Officer, and in all cases, if necessary, the local Government has power *to lay down any rules* it pleases for his guidance in this matter. The Settlement Officer is bound equitably to consider both the forest interest and the interest of the people, and decide whether a commutation is or is not desirable.

§ 4.—*Form of Compensation.*

The Indian Act prescribes (section 15) the following modes:—

(*a*) Payment of a sum of money which may, of course, be either a periodical payment, or a lump sum.

(*b*) A grant of land.

(*c*) Some other mode determined on by the Settlement Officer, *i.e.*, it may be partly money or partly land; or what is likely often to be very acceptable, it may be a remission of a portion of the land revenue assessed on some arable or other land held by the right-holder: or possibly it may be the grant of some other valuable right

that can be exercised without danger, in lieu of the one that cannot; *e.g.*, the concession to cut grass where grazing of cattle cannot be allowed.

The Burma Act (section 15) has exactly the same provisions, except that if a grant by land is proposed, it is specifically stated that the consent of the right-holders to that form of compensation must be had.

§ 5.—*Valuable Examples from European Laws.—France.*

The means provided by the continental laws are so similar to those provided in the India Act, that we shall derive considerable benefit from a comparison of the two[6], the more so because in India practice in this department of administration has not been so long established as to enable us to fix by law, any definite principle of valuation, although it is obvious that we must have something to go on. It is open, as I said, to the Government to make rules regarding compensation, and a consideration of the experience gained in other countries may afford useful suggestions, if it becomes necessary to frame such rules.

The French law, as we have seen, compensates wood-rights always by a grant of a piece cut off from the forest. It does not, of course, follow that the area given up is equal to the area over which the right extended, for the right was only to a certain quantity of wood, and the land given in compensation is given out-and-out[7].

The right first of all is fixed and defined, and the yearly value of it is ascertained[8]. This value is capitalized at the French legal rate of interest (5 per cent.), or, in other words, the capital is the

[6] Nor need I again urge that the circumstances of the countries as regards the peasantry most affected by the settlement of rights, are not so materially different as to make experience derived from one country useless in the other.

There are, no doubt, refinements of calculation and valuation, and some distinctions drawn which we are not prepared for; but in other respects the wants of the people are often identical, and their prejudices equally strong.

[7] "Le cantonnement compense en pleine propriété ce quil ôte en droits d'usage."—*Meaume*, § 162, p. 223.

[8] Meaume, § 240.

yearly value multiplied by 20. If any payment (*rédevancé*) has to be made for the right, this is capitalized and deducted. A piece of the forest is then[9] valued by experts, and must be equal in value to the sum which represents the value of the right.

Under no circumstance is the piece of forest given up more than half the entire area, for that would imply that the right of the right-holders is really more than the right of the forest-owners[10].

In India, when a grant of land is made, it need not be part of the forest; it is a bit of land which has an ascertainable value, not necessarily forest; it may be culturable land equivalent to the value of the right.

In the case of rights bought out (*par voie de rachat*), for a sum of money, the value of the right is obtained in just the same way, and any expenses attendant on its exercise deducted[1]. The cost of the herdsman whom the right-holder is bound to maintain, and of the cattle bells he has to provide, would probably come under this head[2]. The net annual value of the right is then capitalized at 20 years' purchase as before, and the sum is paid in money.

§ 6.—*Compensation under German Law.*

The German authors describe a system still more resembling our own. vonBerg[3] reckons the means of compensation as—

(1) giving a yearly payment;
(2) the same capitalized in a lump sum;

[9] Meaume, § 244. I need hardly repeat that in *all* these cases, where a bit of land is given, either a piece of the forest or separate, under any of the European laws, the grant is in full proprietary right, and is therefore an actual compensation. It must not be confused with the mode of settlement in India described in the previous section, which is not *compensation* at all—whereby effort is made to exclude a portion of the forest from being reserved, and allow the exercise of the right in *that*, instead of inside the reserve. We have the procedure of granting a bit of land—as a *valuable* thing—in compensation for a right, *besides* this, and in cases where it cannot be resorted to.

[10] Meaume, § 193.

[1] Because the expenses will no longer have to be borne.

[2] Meaume, § 257.

[3] vonBerg, p. 189, *et seq.*

(3) "abtretung," or giving up a piece of the estate;
(4) granting, in lieu of a wood-right, after it has been regulated, a fixed grant of wood called "holz deputat," which can be sold or disposed of entirely at the grantee's pleasure.

The third method can only be adopted when there is land suitable to the grantee's requirement; forest if he require forest, or fit for cultivation if he require to cultivate.

The Prussian law is similar[4]. It requires that if land is given as compensation for grazing, the land can only be given if it is fit for agriculture or meadow land; and it is not considered fit if it would produce less under such treatment than it would under forest, and then the party giving the land may remove the wood on it, having three years to do so, but paying rent for the land meanwhile. Wood-rights and rights to take decayed leaves may be compensated by land, but the land here may be fit only for forest, provided it is capable of being continually maintained in a proper state as forest: if it is high forest, it must be not less than 30 acres in extent, as a smaller area would not be manageable.

All this is subject, of course, to the parties not specially agreeing otherwise[5].

The Bavarian law[6] contemplates the extinction of any right,

[4] Ebing, pp. 135-36. Certain rights can only be compensated in certain ways—some with money, some with land. It is not necessary to enter on this.

[5] The object here, it will be observed, is to give the grantee a chance of providing himself the land granted with material for his right. If it is his grazing that is compensated, the land must be fit for meadow or for tillage, so that either he may grow fodder or grass, or take to agriculture and sell his cattle. If he wants wood or dead leaves, he can get it still from the forest tract made over to him, or he can sell the wood and so find funds to buy other manure.

[6] See Roth., p. 325. This compensation is, in fact, like our Indian provision for the exercise of rights in another piece of forest, only we do not include that as a question of compensation, because the right is provided for but not diminished in any way. I confess the Bavarian law is not very clear to me, unless it is intended that the abretung or cutting off of the bit of forest does not confer the proprietary right of the plot. For, if it did, it would surely be very much more than adequate compensation. The land is still to be of sufficient extent to provide for the right, not, observe, to yield a produce or possess an intrinsic value equal to the value of the right, which is quite another thing.

whether wood-right, leaf manure, or other, by cutting off a bit of forest; but this is not valued as in the French law: it must be a piece free of rights of third persons, capable of being kept up as forest, and sufficient to supply the right. Money compensation may also be awarded apparently in *State* forests for any right.

The Saxon law mentions the same methods of compensation[7]. The right-holder chooses which he will have, and may take partly one and partly the other.

The rights to be compensated must all be defined (if not defined already by the terms of the grant). Averages of 12 years past, exclusive of years of famine or other exceptional circumstances, are taken as the basis for estimating quantity and number. Moreover, it is the defined right, as regulated by what the forest can bear, that is valued and compensated[8]. The Art. 130 of this law is worthy of special attention, on the subject of granting land in compensation. This is just the principle which I suggest as being fair and equitable to be followed in our Indian practice:

"The plot of land given in compensation must be in extent, situation and capability, such that the grantee can get off it a yield (whatever it may be in kind) equal in value to the calculated value of the right as heretofore exercised in the forest area to be freed."

§ 7.—*Under Austrian Law.*

The Austrian law[9] mentions a similar compensation. Where money is given, it is at the usual 20 years' purchase of the annual value of the right. Land is apparently given only where the right-holder is a community, or when several right-holders form themselves into a joint body to take up the management of the land granted[10], the idea being apparently that the land grant will be worked as forest, but with the express object of providing for the right,

[7] Law of 17th March 1832, Art. 29, Qvenzel, p. 216, *et seq.*

[8] *Id.*, Art. 127—"bei ordnungs mässiger und wirthschaftlicher Benutzung."

[9] Kais. Patent, 5th July 1853, Arts, 27—30, &c.

[10] See Art. 30 in Grabner.

and that a private owner would be likely to fail in doing this, more so than a body which survives beyond one life.

§ 8.—*Under Italian Law.*

The Italian law[1] as usual following the French, proposes either a piece of the forest to be given in compensation, or a money sum. Disputes about the extent of land, or the amount of compensation in money and other questions arising, are to be settled by the ordinary Civil Courts.

§ 9.—*Under English Law.*

The English law authorities, under the different "Enclosure Acts," do not afford any principles which I can quote as offering useful suggestions in Indian practice. Under the Enclosure Act of 1845, a Commissioner is appointed who hears both sides, and then values the rights established: the land is then devoted partly to "enclosure," while the rest is devoted to being divided out in plots given as compensation for the rights extinguished in the rest.

Petty rights, which would require fractional allotments of land in compensation, are paid for in money. The English Acts, it must be remembered, do not only, or even chiefly, relate to taking up lands for *public* forest purposes; consequently, the question does not arise whether, having cut off portions of the land for the compensation of the right-holders, the remainder is of such size that it can be managed to any useful purpose, or "maintained" as forest. This fact alone renders the provisions little likely to suit Indian Forest Settlements.

§ 10.—*Analogy of other Indian Laws.*

Lastly, under this head I have referred to the Indian Land Acquisition Act (X of 1870), without finding anything that throws light on the practical determination of compensation.

[1] Law of 1875, Arts. 3 and 4. The land is either given in full right or with a "titolo enfiteutico"—an "emphytensis," or grant of absolute user and enjoyment, with the reversion only of the bare ownership in the soil to the original owner.

The Act, it is true, contemplates rights, not being rights of ownership in the land, being compensated; but these rarely or never appear or require to be dealt with in practice under this Act. Nothing is therefore prescribed as to any principle of annual valuation, or of capitalizing such value. The "market value"—whatever that may be—in such cases is alone alluded to as a standard.

§ 11.—*Principles deduced which may be applied to Indian practice.*

If I may gather some general principles from the above illustrations of different laws, I can only do so by way of suggestion. The practice of settlements and the decisions which will in time accumulate, will be the only means of getting at any authoritative rules.

I would suggest that, for money compensation, a yearly value of the right, as defined and as regulated, and then capitalized at 20 years' purchase, will be in practice a fair standard.

Money will usually be given where it is an efficient substitute; as when the possession of an income will furnish the means of *buying* what the right provided, or was intended to provide, under the former state of things. Money, for example, is said to be a good compensation for rights to leaf manure (streu), as it furnishes the right-holder with the means of buying manure, or otherwise improving his cultivation[2]. Money is, of course, a good compensation in all cases where the right is to dig sand, collect produce, &c., for sale: the money is the exact equivalent to the average profit made.

It must be for the Settlement Officer to consider where this is applicable. I suggest that in all cases a yearly payment is far more useful to the people, even if it is a little more trouble to the authorities. A lump sum will be spent and gone, without doing any real good, in nine cases out of ten.

A land grant of such size or value as the Saxon law prescribes will often be the best compensation to an agriculturist.

[2] vonBerg, p. 231.